

Acknowledgments

Since the current consolidation Petition is substantially similar to the 1998 proposal, it is fitting to generally acknowledge the significant efforts of the many local citizens that participated in the development and review of the proposal three years ago.

Additionally, DCED recognizes those listed below as having contributed to the consideration of the pending Petition. (Persons are listed in alphabetical order of last name. DCED does not imply that all persons listed below support the pending Petition. In fact, several of those listed have expressed opposition to the current proposal. Nonetheless, they have contributed to the debate of the merits of the proposal by expressing their views for consideration by others.)

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Executive Summary & Introduction

A. Introduction

In 1998, the Haines Borough and City of Haines jointly prepared and filed a petition to consolidate the two local governments. The Local Boundary Commission unanimously approved the petition. However, voters subsequently rejected the proposal by a very narrow margin (see Figure 1).

State law precludes the filing of a new consolidation petition within two years of the rejection of a prior proposal. However, before the two-year ban had expired, officials of the City of Haines and the Haines Borough met in November 1999 and again in July 2000 to consider a new consolidation proposal. The following account of the second meeting appeared in the July 27,

2000 edition of the *Chilkat Valley News*.

City, borough endorse 2nd consolidation try

Voters may weigh in on proposal next year

Consolidation of the City of Haines and the Haines Borough may be on the ballot again as early as October 2001. That's the target date agreed to at a joint meeting Thursday of city council and borough assembly members called by city mayor Don Otis to gauge support for reintroducing the idea of combining the two governments.

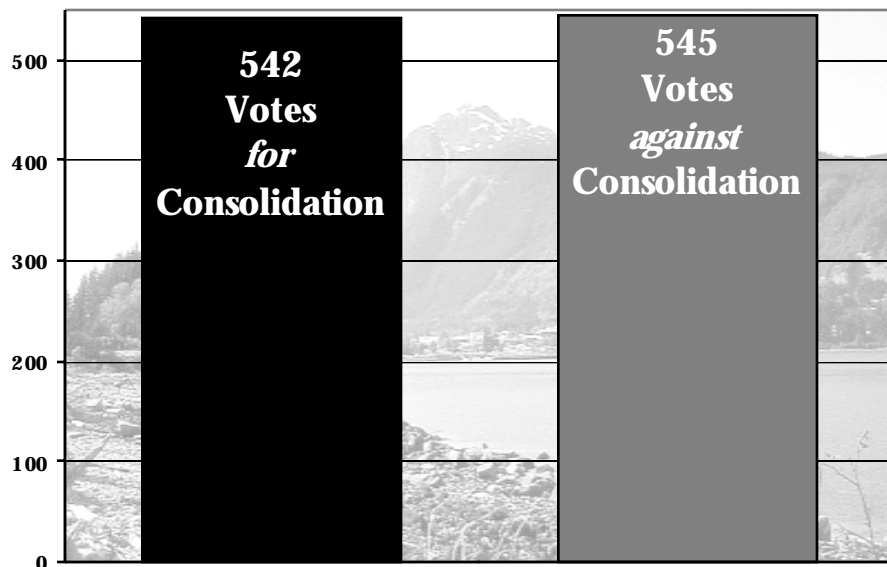
In November 1998, voters boroughwide rejected by just three votes a consolidation charter that would have dissolved the current municipal governing bodies, establishing a single areawide municipality.

Elected officials Thursday, including the entire city council and borough assembly representatives Jerry Lapp and Terry Pardee, agreed to support a second consolidation effort.

"I'm behind it. So is the majority of the assembly," said Lapp, who didn't take a stand for or against the previous measure.

City deputy mayor Chip Lende said the process should begin with a survey to find out what turned voters off last time. "We need to find out why the last charter didn't fly. We created something voters didn't buy. If there are two

Figure 1
1998 Haines Consolidation Election Results



or three things that would make this more palatable to voters, we need to find out what it is.”

Members Thursday suggested that the previous charter’s district representation scheme, that allocated seats to separate geographic locations, was a major stumbling block.

Otis said he favored areawide voting for areawide candidates. “We need to do away with districts and be one community...An areawide candidate has to convince the whole community instead of just their district.”

Four months later, however, the prospect for a new joint City/Borough consolidation proposal seemed unlikely. Relations between the City of Haines and the Haines Borough had reportedly become strained over litigation involving solid waste management in the region.¹ The following excerpt from the November 22, 2000 edition of the *Chilkat Valley News* reflected the discord between City and Borough officials and its

effects on the prospect for a joint consolidation proposal.

City pushes toward October charter vote

Borough leaders sit out meeting

The Haines City Council approved a handful of changes to the 1998 municipal consolidation charter Tuesday, starting it down a path toward a boroughwide vote in October.

The discussion took 20 minutes, less time than councilors have taken to decide on snowplowing some roads.

The council set Dec. 6 for the final public hearing on the charter, which is scheduled to go to the state’s Local Boundary Commission before Jan. 1 and be decided by voters boroughwide in the next municipal election.

The charter, a blueprint for a new municipality combining the City of Haines and Haines Borough, was rejected in November 1998 by a three-vote margin.

Although invited as a group and individually, members

of the Haines Borough Assembly and borough mayor Jerry Lapp were absent from the meeting planned by city mayor Don Otis as a joint gathering. Lapp and assembly members last week said they wouldn’t attend because of a legal dispute between the two municipalities over solid waste management.

“Decisions are made by the people who show up!” Otis wrote across the council chamber chalkboard before the meeting. “They’re not going to kill this idea by not participating,” he said after the meeting.

On December 19, 2000, the Haines Borough Assembly adopted Resolution #512 by a 5-1 vote² “asking the Local Boundary Commission to not proceed with the City’s consolidation petition.”

The following day, the Haines City Council adopted Resolution No. 2000 / 20001 - 18 authorizing the filing of the Petition. On December 27, 2000, the City of Haines formally

submitted the *Petition by the City of Haines for Consolidation of the City of Haines and the Haines Borough as a Home Rule Borough* (hereinafter “Petition”).

¹ In February of 2000, Haines Sanitation, Inc., filed a lawsuit to force the City of Haines to honor a 12-year garbage collection contract signed in 1998. The City asserted, in part, that the creation of the Haines Borough Solid Waste Management Service Area in 1999 eliminated the City’s authority to implement the contract. The City of Haines subsequently brought the Haines Borough into the litigation. On March 1, 2001, the City of Haines and Haines Sanitation, Inc., reached an out-of-court settlement. Alaska Superior Court Judge Patricia Collins signed the dismissal of the case on May 14, 2001.

² Assembly members Pardee, Hill, Harrell, Wilson, and Crupi voted for the resolution while Assembly member Willard voted against it.

Figure 2
Distinctions Between 1998 and Current Consolidation Proposals

Characteristic	1998 Proposal	Current Proposal
Name of proposed consolidated borough	Haines Borough	City and Borough of Haines
Composition of borough assembly	Eight members	Six members
Form of assembly representation	Assembly members elected from districts by areawide voters	Assembly members elected at large by areawide voters
Percentage of Haines residents served by two local governments	59.0 percent of the Haines Borough residents lived in the City of Haines	75.7 percent of the Haines Borough residents live in the City of Haines
Planning commission	Nine members, eight of whom would be appointed from districts and one of whom would be appointed at large	Seven members with no district residency requirement
Eligibility for AHFC rural housing loan program	All residents of the Haines Borough would have lost eligibility for new AHFC program loans if consolidation occurred.	Consolidation will have no effect on eligibility for the AHFC program per regulations adopted by the AHFC board of directors on May 3, 2001.
Petitioner	Haines Borough and City of Haines	City of Haines
Respondents in opposition	None	Haines Borough

[The City made] as few changes as possible to the joint Borough and City Consolidation Charter presented to the Commission in 1998. . . The minor changes will hopefully address some of the concerns, which caused the charter to fail the first time.

The table in Figure 2 summarizes the principal

On February 27, 2001, the Haines Borough took on the status of a respondent when it filed its *Brief of the Haines Borough in Opposition to the Proposed Consolidation* (hereinafter “Responsive Brief”).³ In addition to the

Responsive Brief from the Borough, eleven individuals or groups of individuals submitted written comments on the consolidation proposal.

The City of Haines subsequently submitted a reply brief in answer to the Borough’s Responsive Brief and the written comments from the individuals and groups.

B. Comparison of 1998 and Current Proposals

The current Petition is based largely on the previously noted 1998 consolidation proposal. The City stressed in its Reply Brief (pages 2 and 6) that:

distinctions between the 1998 proposal and the current Petition. Figure 2 also recaps significant changes in circumstances surrounding the two proposals. A discussion of those distinctions follows.

1. Relationship between the City of Haines and Haines Borough.

One significant variation between circumstances surrounding the 1998 proposal and the current Petition concerns the relationship between the City of Haines and the Haines Borough. As noted previously, the two governments jointly prepared and filed

³ Daniel L. Turner, Haines Borough Assessor/Land Manager, signed the Responsive Brief. Mr. Turner also signed a sworn affidavit that the information in the Responsive Brief was, to the best of his “knowledge, information, and belief, were formed after reasonable inquiry . . .” Thus, Mr. Turner is designated as the Respondent’s Representative in this matter.

At A Glance

1ST SIGNIFICANT CHANGE SINCE 1998: CITY & BOROUGH RELATIONS

Relations between the City & Borough have weakened since 1998. Three years ago, the Borough & City jointly petitioned for consolidation. Today, the two are at odds over the matter. The five reasons given by the Borough Assembly for its opposition to the proposal are addressed in this Executive Summary.

the 1998 consolidation proposal⁴ – today, the City of Haines and the Haines Borough are on opposite sides in this proceeding.

The following circumstances were cited by the Haines Borough as the basis

for its December 19, 2000 objection to the pending Petition.

- voters rejected consolidation in 1998;
- the consolidation process “does not allow for enough input by all borough residents;”
- the Petition eliminates assembly districts, creating the possibility that the assembly would be comprised entirely of City residents;
- the “combined vote called for under consolidation disenfranchises voters in the areas outside of the City;” and

- “the process for unification would allow for more public involvement, allowing for a fairer and more representative government.”

Those concerns are explored below.

Prior Voter Rejection of Consolidation.

Voters of the Haines Borough indeed rejected consolidation in 1998. However, there is no legal barrier to the pursuit of the subsequent consolidation proposal. As noted previously, State law specifically allows the filing of a new consolidation proposal after an interval of two years following the rejection of a similar proposal.

Moreover, given the Borough’s expressed preference for the unification process over consolidation, there appears to be no ideological basis for the Borough to oppose consolidation on the grounds that voters previously rejected a similar proposal. Unlike consolidation, the unification process actually *mandates* that a second proposal be prepared and submitted to the voters *within one year* if the initial unification proposal is rejected.

⁴ The 1998 petition was initiated under authority of City of Haines Resolution No. 97/98 – 30, adopted on March 26, 1998, by a vote of 4-0 (Council members Lende, Lowden, Walker, and Otis); and Haines Borough Resolution # 442 adopted on March 30, 1998, by a vote of 4 – 2 (Assembly members Schnabel, Menaker, Willard, and Nelson voted for the resolution while Assembly members Koenig and Hill opposed it).

It seems incongruous for the Borough to oppose the pending consolidation proposal because voters rejected a similar proposal in 1998, yet express a preference for the unification process which would have required a second proposal to be submitted to the voters within one year if the first one failed.

Moreover, the City of Haines indicates that Haines Borough officials in attendance at the joint City/Borough meetings on November 23, 1999 and July 20, 2000 “supported consolidation at that time.” (Reply

Brief, page 5). Only after relations between the two governments became strained, apparently due to the previously noted litigation, was the prior voter rejection of the proposal raised as a concern.

Further, based on formal representations made jointly by the Haines Borough and the City of Haines in 1998, there certainly seems to be ample reasons for pursuing the subsequent consolidation proposal (see Figure 3 on page 7).

City officials believe that a majority of the Borough

voters, including those in the City, currently support consolidation. The City modified the 1998 proposal by changing elements that City officials believe the voters found objectionable in 1998.

Public Input Allowed Under Consolidation Process.

DCED disagrees with the assertion that the consolidation process “does not allow for enough input by all borough residents.” There was a very substantial public effort to develop the 1998 consolidation proposal upon which the current Petition is based. The Mayors of the City of Haines and the Haines Borough appointed a twelve-member commission to oversee the development of the 1998 charter and the consolidation proposal.

Additionally, staff from the two local governments and the former Department of Community and Regional Affairs (DCRA) contributed extensive technical assistance to the effort. An internal DCRA staff report at

At A Glance

REASON #1 FOR BOROUGH OPPOSITION

The Borough objects to the current proposal because voters rejected a similar one in 1998. Yet, the Borough also expresses a preference for unification over consolidation. Unification actually *requires* the submission of a revised proposal if voters reject the first. Consolidation allows, but does not require a resubmission. Given the Borough’s preference for unification, it is unclear why it objects to the submission of a revised consolidation proposal to the voters.

At A Glance

REASON #2 FOR BOROUGH OPPOSITION

The Borough asserts that the consolidation process does not allow adequate public input. The record suggests otherwise. To begin with, the current Petition is substantially similar to the 1998 proposal that was formed after very considerable public participation. Further, City or Borough officials held at least six public meetings regarding consolidation before the current Petition was filed with the LBC. Once filed, twenty-two individuals & organizations submitted twelve sets of comments comprising 172 pages. The Borough alone submitted 155 pages of materials.

Furthermore, the consolidation process guarantees significant opportunities for public involvement. A number of important steps allowing public involvement remain in this proceeding. The Borough will have a prominent role during the public hearing on the proposal. Similar guarantees are lacking in the unification process favored by the Borough.

the time reflected the level of effort involved:⁵

The twelve member Haines Consolidation Commission is collectively spending an estimated 180 hours a week developing the charter and other key provisions of the consolidation proposal. A full-time staff person has been hired by the Commission. Numerous staff from the City and Borough are contributing the estimated equivalent of at least one full-time position to the effort. Additionally, between DCRA's LBC staff and regional office staff, at least one more full-time equivalent

position is providing technical assistance and support to the effort. Together, the equivalent of 7.5 full time positions are committed to the effort.

In addition to two regular meetings of the Commission each week, a number of committees are addressing particular issues. On February 16, LBC staff and staff from DCRA's Southeast Regional Office at-

tended a two-hour community workshop in Haines on consolidation. The following day LBC/DCRA staff met with the Commission's staff, the Commission Co-Chairs and a committee of the Consolidation dealing with service areas. Efforts to draft a petition for consolidation of the local governments in Haines, including a home rule charter, appear to be on track.

Further, DCRA commented in its Preliminary Report on the 1998 proposal regarding the level of communication and opportunity for public input.

KHNS conducted live broadcasts of each of the many meetings of the Charter Commission. Reporters from both newspapers covered the meetings as well. Additionally, the Haines Public Library established an Internet web site to provide information regarding the consolidation proposal.

Moreover, one of the critics of the pending consolidation proposal acknowledged the extensive opportunities for public input in the 1998 proceeding. Ms. Piggott wrote to the Local Boundary Commission on March 4 of this year that,

⁵ Local Boundary Commission staff, *Haines Consolidation Effort on Track*, February 18, 1998.

"We voted on this just a short time ago after *a lot of work was done on consolidation, with many open forums.*" (Emphasis added)

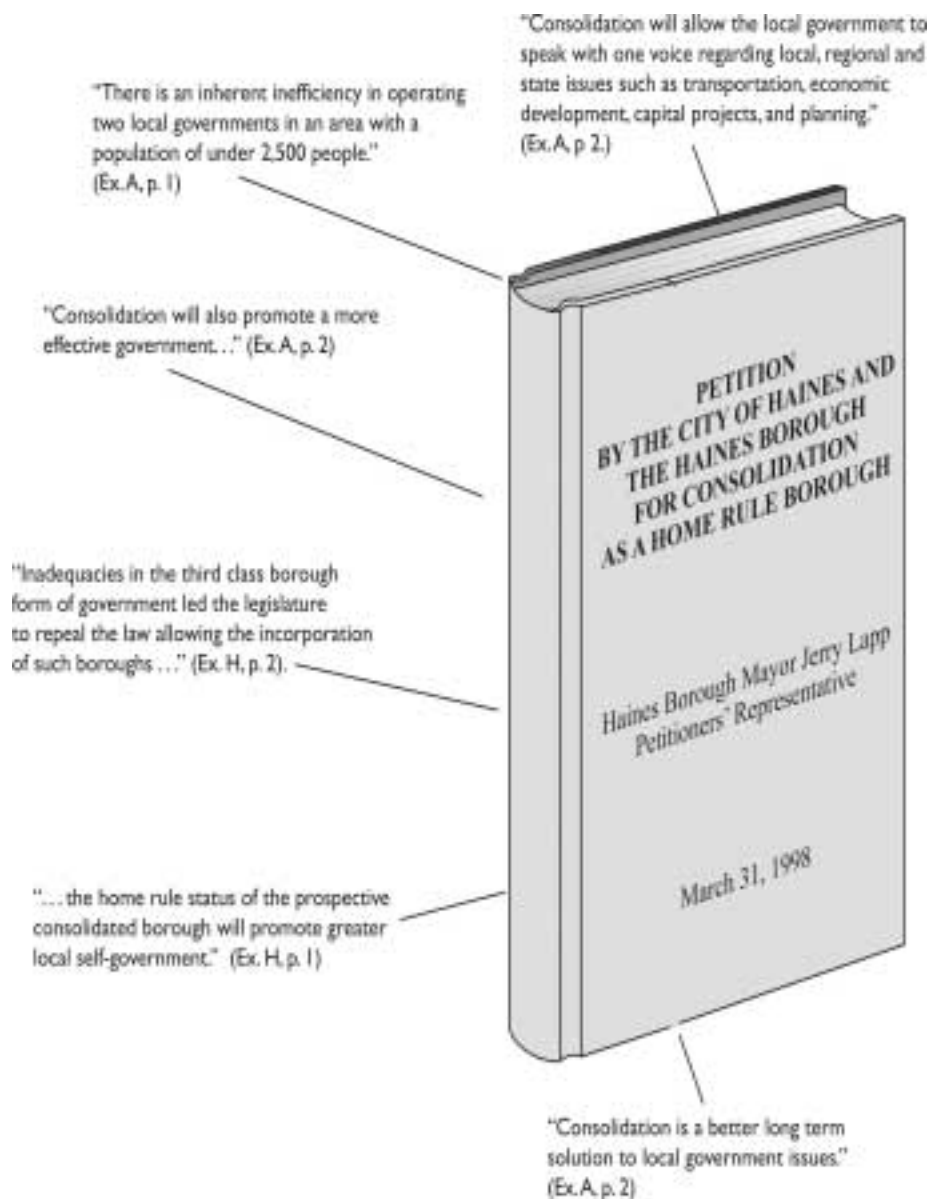
Furthermore, local officials and citizens discussed the prospect of the current consolidation proposal during at least six meetings spanning the course of more than one year. Those meetings included joint City/Borough meetings on November 23, 1999 and July 20, 2000. The City Council also met on November 21, 2000. Borough officials were invited to attend that meeting, but none did. The Haines City Council met again on the matter on December 6, 2000. The Haines Borough Assembly addressed consolidation at a meeting on December 19, 2000. Lastly, the Haines City Council met regarding consolidation on December 20, 2000.

Once the current Petition was filed, extensive public notice was provided. Individuals and organizations were given

more than eight weeks to prepare and submit written comments and responsive briefs to the Local Boundary Commission regarding the Petition. The Haines Borough's representative in this matter filed 155 pages of materials in opposition to the consolidation Petition (a nineteen-page opposition brief accompanied by 136 pages of supporting documents). Eleven other

individuals or groups submitted timely comments on the proposal.

Individuals and organizations are invited to submit written comments on DCED's Preliminary Report analyzing the pending consolidation Petition. In addition, local officials and other citizens of the Haines Borough will be permitted to testify and comment on





1998 Haines Charter Commission.

the proposal at one or more public hearings to be held by the Local Boundary Commission in Haines. As a respondent in this proceeding, the Haines Borough will be allowed to make an opening statement at the consolidation hearing, provide sworn testimony during the hearing, and make a closing statement at the conclusion of the hearing.

To address issues that arise during the course of consideration of the proposal, the Petitioner may amend the Petition. Moreover, the Local Boundary Commission may amend the Petition or impose conditions to address issues that arise during the course of the consideration of the proposal.⁶ Lastly, individuals and organizations have the right to seek reconsid-

eration of the decision ultimately rendered in this matter.

The unification process preferred by the Borough provides fewer guarantees for input. State law provides that a unification charter commission must conduct its initial meeting within thirty days after election of the commission. It requires charter commission meetings to be open to the public at all times. Outside of those requirements, the law provides only that the unification charter commission must hold a public hearing in each area represented on the assembly before and after drafting a charter. (See AS 29.06.290 and AS 29.06.330.)

In contrast to procedures for consolidation, there is no formal structure in the

unification process for the filing of written comments or briefs regarding the work of the charter commission. Further, there is no specific opportunity for independent analysis of the charter commission's proposal as there is in consolidation. Additionally, once the charter commission has adopted the

proposed charter, there is no opportunity for amendment prior to the election on the unification proposal. Moreover, there is no assurance that the Borough would have the rights at any unification charter commission hearing that it will enjoy at the consolidation hearing. Lastly, there is no express opportunity for reconsideration of decisions rendered by a unification charter commission.

The broad flexibility and ample opportunity for public input under the consolida-

⁶ Historically, the Commission has exercised its authority to amend a petition or to impose conditions only after carefully considering the views of petitioners, respondents, and others.

⁷ Following a hearing on April 21, 2001, the Local Boundary Commission unanimously approved the proposal for consolidation of the City of Ketchikan and the Ketchikan Gateway Borough. A proposition for consolidation will be placed before the voters of the Ketchikan Gateway Borough at an election on July 17, 2001.

⁸ After three unsuccessful attempts at unification of local governments in Ketchikan (1973, 1979, and 1986), the Ketchikan Chamber of Commerce initiated discussions on consolidation in 1990. The Chamber of Commerce formed a consolidation committee that met over a period of three years to examine issues relating to consolidation. In 1993, the Ketchikan City Council voted to pursue consolidation. In 1994, the Mayor of the City of Ketchikan appointed a charter commission to develop a home rule charter. The Commission met at least twelve times. It submitted its charter proposal to the City Council in 1995. From 1995 through 1999, the charter was further refined through ten meetings of the Ketchikan City Council (some of which were involved the Assembly of the Ketchikan Gateway Borough). The petition and charter were filed with the Local Boundary Commission in May of last year.

tion process were abundantly demonstrated in the recent proceedings for consolidation of local governments in Ketchikan.⁷ Ketchikan officials utilized an extensive public process for the development of a home rule charter for the proposed consolidation of the City of Ketchikan and the Ketchikan Gateway Borough.⁸ Notwithstanding the extensive public process involved in developing the Ketchikan charter, the need for further refinement became evident during the public comment period utilized in the consolidation proceedings. Based on local input during that public comment period, DCED recommended six amendments to the proposed charter. With the concurrence of petitioner (City of Ketchikan), the Local Boundary Commission made the recommended amendments.

Assembly Apportionment.

The Borough argues that at large representation creates the possibility that the assembly would be comprised entirely of residents within the current boundaries of the City of Haines. Theoretically, at least, that is indeed a possibility. However, it is also a theoretical possibility that a

majority of the assembly or even the entire assembly would be comprised of residents outside the current boundaries of the City of Haines under an at large voting system. Non-City residents currently hold all of the at large elective offices of the Haines Borough (Borough Mayor/School Board Chairman and one Assembly/School Board member).

As an alternative to at large representation, the Haines Borough has expressed a preference for assembly members to be elected from districts by voters of the respective districts. Currently, the Borough Assembly is apportioned by electing three members from within the City of Haines, two members outside the City of Haines, and one member at large.

It is noteworthy that a number of organized boroughs in Alaska that (like Haines) have populations concentrated in one or two communities, utilize the at large form of assembly representation. These include the Bristol Bay Borough, Fairbanks North Star Borough, Ketchikan Gateway Borough, Kodiak Island Borough, City and Borough of Sitka, and City

At A Glance

REASON #3 FOR BOROUGH OPPOSITION

The Borough opposes the Petition because it provides for election of assembly & school board members at large. Nearly three-fourths of the borough school boards in Alaska are elected at large. The 1998 proposal co-sponsored by the Borough even provided for election of school board members at large. The election of assembly members at large is also the most popular form of representation among boroughs in Alaska.

However, district representation preferred by the Borough is also fundamentally sound and popular. The Borough is concerned that areawide representation may result in all assembly seats being filled by City residents. If present circumstances are any indication, that will not happen because the only two areawide elective offices of the Borough are both filled by non-City residents. Moreover, district representation preferred by the Borough would guarantee that City residents would heavily dominate the Assembly.

and Borough of Yakutat. However, there is also one borough (Municipality of Anchorage) with its population concentrated in a single community that utilizes a district form of apportionment.

Both options for assembly representation are fundamentally sound. There are legitimate arguments that favor either alternative. The at large form of representation included in the current Petition is the most popular option among

existing boroughs in Alaska. The district form of representation favored by the Haines Borough is the second-most popular option.

Either option would likely pass the requisite Federal Voting Rights Act review. However, given the population characteristics of the Haines Borough, at large voting might be favored under the Voting Rights Act guidelines for reasons outlined in DCED's Preliminary Report.

District representation would, of course, assure that some assembly members would be elected from the area outside the current City of Haines. However, it would also guarantee that the assembly would be heavily dominated by members elected from the current City of Haines. In fact, under district representation, assembly members elected from the City would outnumber representatives elected from the remainder of the Borough by a margin

of three to one. The equal protection clauses of the Alaska Constitution and U.S. Constitution require district representation to be based on population. Since the area within the current City of Haines contains just over 75% of the population of the Haines Borough, that area would be entitled to three-quarters of all assembly seats elected by districts. With an eight-member assembly, six members would have to be elected from the City of Haines.

Consolidation Voting Requirements.

Consolidation is subject to areawide voter approval. In contrast, unification of local governments in Haines would be subject to approval

by voters in the City of Haines and separately by voters outside the City of Haines. On the basis of those distinctions, the Haines Borough characterizes consolidation as a process that “disenfranchises voters in the areas outside of the City.”

Disenfranchisement occurs only if qualified voters are deprived of the right to vote. The consolidation process certainly does not disenfranchise any voter. Rather, it treats all voters uniformly. However, the same cannot be said about unification.

The unification process would create different classes of voters among the citizens of the Haines

Borough. Those living within the City of Haines would be treated as one class of voters and those living outside the City of Haines would be treated as a different class of voters. The distinction between the classes is arbitrary in two fundamental respects.

First, although unification would affect citizens inside the City of Haines differently than those outside the City of Haines, the degree of difference would be narrow (as is the case with consolidation).⁹ Moreover, there are many other groups of Haines Borough citizens in addition to just those inside and outside the City of Haines that would be affected by unification in different fashions. For example, residents of the Mud Bay Land Use Service Area and the Lutak Land Use Service Area would be uniquely affected by unification since the resulting unified borough would assume areawide responsibilities for planning, platting, and land use regulation. Yet, voters in the Mud Bay and Lutak land use service areas would not be entitled to separately decide

At A Glance

REASON #4 FOR BOROUGH OPPOSITION

The Borough objects to consolidation because it does not require voter approval both inside and outside the City. The Borough prefers unification, which requires such separate approval by voters. Consolidation is governed by majority rule; unification is not. Unification could be blocked in Haines even if it were supported by approximately 90% of the voters. Moreover, unification creates arbitrary classes of voters, whereas consolidation treats all voters equally.

⁹ DCED's full Preliminary Report lists the effects of consolidation.

the fate of unification. Based on the Borough's argument, the citizens of the Mud Bay and Lutak land use service areas would be "disenfranchised" by the unification process. The same would be true for many other groups of citizens of the Haines Borough. Again, unlike unification, consolidation treats all voters equally.

The second reason that the classifications created by unification are arbitrary is that they exist only if there are particular kinds of city governments involved. If the City of Haines were a second class city, the distinction would not apply. The City of Haines could reclassify as a second class city under AS 29.04.040. As a second class city, the City of Haines could exercise every power, provide every service, and operate every facility that it does now as a first class city.¹⁰ It would be essentially the same govern-

ment, but Haines would not be subject to the requirement for separate voter classifications in a unification election.

The creation of the different arbitrary classes of voters under the unification process would grant the ability to a small minority of voters to thwart the will of the majority of the Haines Borough citizens. It is theoretically possible that a Haines unification proposal could be defeated even if nearly ninety percent of the Borough voters favored it.¹¹

The City of Haines takes the view that consolidation of the two local governments is a matter of areawide importance. The City stresses in that regard, "If Haines is ever to truly become one community, then the community must act, think and vote as one community."

Unification.

The last objection formally noted in the December 19, 2000 communication from the Borough indicates that "unification would allow for more public involvement, allowing for a fairer and more representative government." This argument is redundant in terms of the second assertion made by the Borough (i.e., "consolidation does not allow for enough input by all borough residents").

In addition to distinctions between unification and consolidation previously addressed, there is one other fundamental point that seems to be incongruous with the perception that unification would guarantee non-City residents "more public involvement," that it would be "fairer," or that it would result in "more representative government" as compared to consolidation. Under State law,

residents of the City of Haines would dominate any unification charter commission. A unification charter commission must be comprised of eleven members, eight of whom would be elected in proportion to the population inside and outside home rule and first class cities

¹⁰ Some of Alaska's most populous and sophisticated city governments are second class cities. For example, the City of Bethel is a second class city that provides a broad range of public services to a population more than twice as large as that in the entire Haines Borough.

¹¹ The population of the City of Haines comprises 75.7% of the population of the Haines Borough. The area of the Haines Borough outside the City of Haines encompasses 24.3% of the population of the Haines Borough. If half of the voters outside the City of Haines (12.2%) rejected a unification proposal, it would be defeated even if the remaining 87.8% of the voters supported it.

At A Glance

REASON #5 FOR BOROUGH OPPOSITION

The Borough opposes consolidation because it believes that unification guarantees greater opportunity for public input, especially for non-City residents. This is not the case. As noted previously, the consolidation process has procedural guarantees not provided under unification. Furthermore, requirements of State law are such that City residents would dominate any unification charter commission in Haines.

(AS 29.06.240). In the case of Haines, six of those eight charter commission members would be elected from the City of Haines. The remaining three seats on the eleven-member commission would be elected at large. City residents could be elected to as few as none or as many as all of the three at large seats. Thus, a unification charter commission in Haines would be comprised of six to nine City residents, a majority in any case (potentially, an overwhelming majority).

In conclusion, assertions that consolidation (1) should not be pursued because voters previously rejected the 1998 consolidation proposal, (2) fails to

allow adequate public input, and (3) disenfranchises voters outside the City of Haines do not withstand careful examination. Debate over assembly apportionment is largely a matter of local concern. There are legitimate arguments favoring both at large representation and district representation. It must be recognized, however, that while district representation would ensure non-City representation, it would also ensure that City residents heavily dominate

the assembly. No systematic effort has yet been undertaken either by the City of Haines or the Haines Borough to determine the informed preferences of residents of the Haines Borough with respect to apportionment of the Borough assembly. Ample opportunity to do so remains before the Local Boundary Commission conducts a hearing on the matter. DCED is prepared to offer assistance to the City of Haines and/or the Haines Borough in any effort to determine which form of assembly representation is most desired by citizens of the Haines Borough.¹²

It has been indicated that the conflicting positions of the City and the Borough regarding the overall issue of consolidation stems, at least in large measure, from litigation involving regional solid waste management. The City of Haines notes in this regard:¹³

The Haines Sanitation lawsuit has been a significant factor in the deteriorating state of relations be-

¹² DCED has a role under both Article X, § 14 of the Constitution of the State of Alaska and AS 44.33.020(1) to "advise and assist local governments." Moreover, DCED has a particular role in matters involving apportionment of borough assemblies under AS 29.20.090 – 29.20.120.

¹³ City of Haines, *Reply Brief*, page 8.

tween the City and the Borough. It is indicative of the type of situations we find ourselves in, which are perhaps the strongest arguments **for** consolidation. (emphasis original)

It is easy to understand that litigation between the two parties would strain relations and make cooperation on other matters more difficult. However, the recent settlement of the Haines Sanitation litigation may create an opportunity for officials of the City of Haines and the Haines Borough to further consider their significant shared interests regarding consolidation. DCED encourages officials of the two local governments to make a further attempt to reconcile their differences concerning consolidation.

2. Number of Citizens Served by Two Local Governments.

Another noteworthy distinction between circumstances surrounding the prior and current proposals is the increase in the number of Haines citizens served by two local govern-

ments. The percentage of Haines Borough residents living within the City of Haines has increased by more than one-quarter over the level just three years ago.¹⁴ Today, more than 75% of all residents of the Haines Borough live within the City of Haines.

The increase in the number of City residents in the Haines Borough is

not just a recent occurrence. The trend has existed virtually since the creation of the Haines Borough in 1968. In 1970, two local governments served 50.6% of Haines Borough residents.¹⁵ Today, the figure stands at 75.7%. The pros-

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2ND SIGNIFICANT CHANGE SINCE 1998: INCREASE IN CITIZENS SERVED BY OVERLAPPING GOVERNMENTS

Since 1998, the percentage of Haines Borough residents served by two governments has increased by more than one-quarter.

The trend in Haines is counter to the statewide movement. Since 1970, the percentage of borough residents statewide that are served by two municipal governments has *dropped* by nearly two-thirds. In contrast, the percentage of Haines Borough residents served by two municipal governments during the same time has *increased* by half.

¹⁴ This is due, in large part, to the annexation of 6.5 square miles to the City of Haines in 1999. That territory was estimated to be inhabited by 278 individuals.

¹⁵ In 1970, the population of the Haines Borough was 1,351. There were two city governments in the Haines Borough at that time – the City of Haines (population 463) and the City of Port Chilkoot (population 220). The City of Port Chilkoot was merged with the City of Haines in 1970.

pect for the trend to continue cannot be discounted.¹⁶

The trend over the past thirty years in Haines is in dramatic contrast to the statewide trend. As is shown in Figure 4, the number of people in the Haines Borough who also lived within a city government was representative of the statewide average in 1970. However, since then, the figure for Haines has *grown* by half (from 50.6% to 75.7%). In contrast, the statewide average has *dropped* by nearly two-thirds (from 49% to 18%).

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3RD SIGNIFICANT CHANGE SINCE 1998: RURAL LOAN PROGRAM MODIFIED

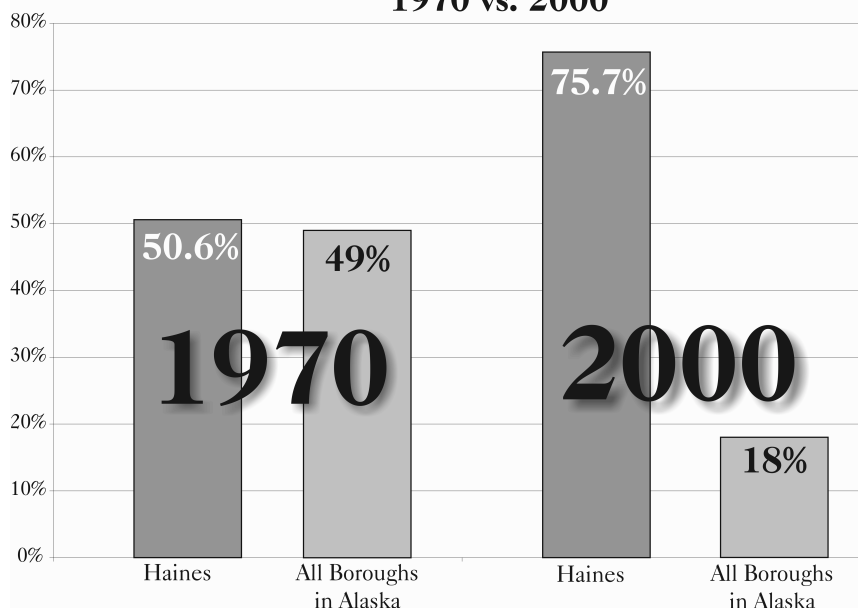
In 1998, consolidation of local governments in Haines would have rendered Borough residents ineligible for new AHFC rural housing loans. The AHFC program was modified on May 3, 2001 so that consolidation will no longer affect eligibility for rural housing loans.

3. Rural Housing Loan Program.

Another noteworthy change in the circumstances between 1998 and the current proceedings relates

to the rural housing loan program of the Alaska Housing Finance Corporation (AHFC). One opponent of the 1998 proposal placed a quarter-page advertisement in the *Chilkat Valley News* prior to the consolidation election, in part, urging voters to reject the consolidation proposal because "... all Borough residents inside and outside the City will

Figure 4
Borough Residents
Served by Two Local Governments
1970 vs. 2000



¹⁶ When the Local Boundary Commission approved the last annexation to the City of Haines, it formally stated that, "... the Commission recognizes that there *may* be additional territory outside the proposed new boundaries of the City of Haines that need essential city services. Such *may* include the area extending to Letnikof Cove ..." (Decisional statement, page 10)

lose their eligibility for rural financing if we consolidate.”

Subsequent to the Haines consolidation election, the Local Boundary Commission observed:¹⁷

Considering the close vote and the substantial concern over the loss of eligibility to participate in the housing loan program, it is likely that consolidation would have been approved if the impacts on the housing loan program had been neutralized.

Because of the apparent adverse effect of AHFC’s rural housing loan program on the outcome of the Haines consolidation proposal and a number of other significant proposals that came before the Local Boundary Commission, the

Commission conferred with AHFC to address the issue. On May 3, 2001, the AHFC Board of Directors adopted regulations (15 AAC 152[b]) ensuring that communities would no longer lose eligibility to participate in the rural housing loan program as a result of municipal consolidation.

4. Planning Commission, School Board, and Assembly.

The last contrast of note between the 1998 proposal and current consolidation Petition relates to the planning commission, school board, and assembly of the proposed consolidated borough.

The 1998 proposal provided for a nine-member planning commission with one member appointed at large. The remaining eight members were to be appointed according to the same apportionment plan used for the assembly. In contrast, the current Petition proposes a seven-member planning commission to be appointed without regard to residency.

Planning commissions in other boroughs in Alaska range from nine to four members.¹⁸ Seven-member commissions (as proposed in the pending consolidation

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4TH SIGNIFICANT CHANGE SINCE 1998: FORM OF REPRESENTATION

The City believes that voters rejected consolidation three years ago because of the assembly apportionment plan in the 1998 proposal. Accordingly, the apportionment plan was modified in the current Petition to provide for the election of the assembly at large.

The City has emphasized, however, that it is receptive to proposals to modify the apportionment plan if there is a legitimate basis for change.

¹⁷ *Report of the Local Boundary Commission to the Second Session of the Twenty-first Alaska State Legislature*, page 74, January 19, 2000.

¹⁸ State law provides that the planning commissions of first and second class boroughs shall consist of five members unless a greater number is required by ordinance. The law provides further that members of first and second class borough planning commissions shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities in the borough. (AS 29.40.020) Those provisions, however, are not binding on a home rule borough such as the proposed City and Borough of Haines. (AS 29.10.200)

Petition) are used by three existing organized boroughs. The Haines Borough raised no objection to the current proposal for appointment of the planning commission.

However, the Haines Borough does object to the method proposed in the current Petition for the election of the school board and the assembly. Provisions for the election of the school board in the current Petition are identical to those in the 1998 proposal. Both provided for a school board comprised of seven members elected at large. Eleven of the fifteen other organized boroughs in Alaska (73%) elect school board members at large by an areawide vote – the same form of representation proposed in both the 1998 and current Haines consolidation proposals.

Unlike provisions for the election of the school board, however, there were changes in the current proposal as it relates to the election of assembly members. This is ostensibly the most contentious issue surrounding the current consolidation proposal. The 1998 proposal provided for eight assembly members to be elected from districts by an areawide vote. The current Petition

proposes a six-member assembly elected at large by an areawide vote.

Controversy over assembly apportionment is not unique to the current proposal. Local officials at the November 23, 1999 meeting of the City Council and Borough Assembly (the first meeting to address the prospect of a new consolidation petition) were reminded of the lack of consensus in the 1998 proceeding regarding the best apportionment plan.¹⁹

One of the things that brought this to my mind was the articles in the paper by John Schnabel and Dan Turner, where John Schnabel was arguing all these people out the highway, the outskirt people, are going to control the city vote and Dan Turner arguing that the people in the city are going to control the vote for the outlying areas. And so they were using the same argument.

Some believe that voters rejected the 1998 Haines consolidation proposal because of the assembly apportionment plan. However, those same individuals do not agree as to the preferred alternative. The following comments by two local residents at the December 6, 2000 meeting of the Haines City Council

reflect the lack of consensus in the following comments.²⁰

Speaker 1 —

I can assure you that the previous charter would have passed – I can guarantee it would have passed had there been district voting with the districts.

Speaker 2 —

... the consolidation vote last lost because of city residents. . . . They are highly motivated and. . . really torpedoed it on the basis that the outlying areas would gain the voting powers . . . and it lost because of that.

While there are strong feelings on the topic, no one has yet come forward with documentation in support of claims about voter preferences. The election of assembly members at large by an areawide vote is the most popular form of representation among boroughs in

¹⁹ *Transcript of November 23, 1999 Haines City Council / Haines Borough Assembly Special Joint Consolidation Meeting, page 11, Exhibit 4A, Haines Borough Responsive Brief.*

²⁰ *Transcript of December 6, 2000 Haines City Council Meeting, pages 5 - 7, Exhibit 3, Haines Borough Responsive Brief.*

Alaska. The alternative of electing assembly members from districts by voters of those districts is the second most popular method in Alaska.

The question of the ideal composition and form of representation for the assembly of the proposed consolidated borough comes at a time when public officials and citizens of Haines must consider such matters for other reasons. The Haines Borough Assembly is required by State law (AS 29.20.080) to declare within two months of the adoption of a final redistricting plan for the State legislature whether its current apportionment is proper. The final redistricting plan was adopted on June 18, 2001. Thus, by August 18, the Haines Borough Assembly must declare whether its current apportionment conforms to the requirements of law.

Moreover, the Borough Assembly is required by AS 29.20.070 to submit to the voters at an election on or before October 2, 2001, one or more of the following forms of assembly representation:

- election of assembly members at large by the voters throughout the borough;

- election of assembly members by district by the voters throughout the borough;
- election of assembly members from districts by voters of the respective districts;
- election of assembly members both at large and by district.

In the case of the last three options, an apportionment plan must also be presented to the voters.

Although the Haines Borough's Responsive Brief expresses a preference for the election of assembly members on a district basis, it urges the Local Boundary Commission not to amend the Petition because it would "show bias."²¹

We ask that the Local Boundary Commission either deny the petition or approve the petition as submitted based on its (sic) merit or lack thereof and that no amendments be made by the LBC. Any amendments made by the LBC to gain a few votes on one side or the other would show bias by the LBC and staff towards one side or the other in this local issue. We hope that the LBC would stay neutral.

In response to the Borough's position, the City of Haines stated:²²

It is curious however, that the Haines Borough would ask the Local Boundary Commission to "either deny the petition or approve the petition as submitted" with no amendments. There has been an obvious neglect of representation by the Borough Assembly for the citizens living outside the City of Haines in this process. While the City of Haines has repeatedly asked for the Borough to participate in this endeavor, their absence from the process has potentially excluded valid points of view from consideration. The City Council did take public comment from individual citizens who reside outside the City of Haines but recognizes that some points may have not been fully represented due to the Borough's neglect towards their constituents.

The City made as few changes as possible to the joint Borough and City Consolidation Charter presented to the Commission in 1998. The City welcomes the oversight of the Local Boundary Commission and any input they would recommend. . . .

If Haines is ever to truly become one community, then the community must act, think and vote as one community. The City feels this system is the best to achieve the long-term sense of community. The

²¹ *Response Brief*, page 19.

²² *Reply Brief*, pages 2 and 5.

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5TH SIGNIFICANT CHANGE SINCE 1998: ECONOMIC CHALLENGES

The Haines economy faces greater difficulties than it did three years ago. Some believe that a consolidated local government would be better able to assist the community in dealing with the significant economic challenges it now faces.

Borough Assembly itself must change its composition now that the census is complete. If the Borough wishes to put the issue to the voters as an amendment to the Charter, the City will not object.

To the extent such information is available prior to the Commission's decision in this proceeding, DCED recommends that the Commission consider any evidence relating to efforts of the City of Haines or the Haines Borough to determine the most suitable plan for assembly composition and apportionment. If that evidence demonstrates

a compelling basis for alteration of the apportionment plan presented in the pending Petition, the Commission should consider amending the Petition to include the more suitable plan.

C. Other Developments

Although not directly tied to consolidation, one other significant development in Haines since 1998 deserves comment. On December 7, 2000, Royal Caribbean International announced that it was canceling its fifty-two

annual cruise ship stops in Haines. The effects of the announcement were reported as follows:²³

A decision by Royal Caribbean International to bypass Haines next season leaves the city with a \$445,000 hole in its \$3.8 million budget and local businesses worried about their survival. . . .

The Royal Caribbean decision translates into a huge loss for Haines, which will have a single large ship call next year. According to the newly released McDowell report, the ships support 116 full-time, equivalent jobs with a payroll of \$2.4 million, \$8.8 million in passenger spending, \$1.2 million in cruise line purchases, \$278,000 in crew spending and \$445,000 in sales tax receipts and fees.

"My general reaction is it's devastating to our economy and devastating to our city," said City of Haines Mayor Don Otis. . .

The loss of four of five large cruise ships comes on the heels of three years of declining road traffic.

Some believe that a consolidated local government would be better able to assist the community in dealing with the significant economic challenges it now faces. The Haines Borough and the City of Haines, in 1998, stressed the advantages of a

²³ North West CruiseShip [spelling verbatim] Association web site at < <http://www.alaskacruises.org/165.cfm> > , article attributed to the *Chilkat Valley News*.

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CONSOLIDATION STANDARDS

There are eleven legal standards that govern consolidation. In DCED's view, the pending Petition meets all of the standards. Moreover, there is a compelling public policy basis to approve the proposal.

consolidated local government in dealing with local issues and challenges:²⁴

Consolidation will also promote a more effective local government by eliminating the confusion that exists with separate City and Borough governments in intergovernmental affairs, as in cases involving interaction with state and federal agencies. Consolidation will allow the local government to speak with one voice regarding local, regional and state issues such as transportation, economic development, capital projects, and planning.

D. Standards for Review

Standards established in Alaska's Constitution, Statutes, and Administrative Code for the consolidation

of city and borough governments relate to the following eleven issues:

- community of interests,
- population,
- boundaries,
- resources,
- borough classification,
- civil and political rights,
- transition,
- maximum local self-government,
- minimum of local governments,
- constitutional provisions relating to cities and service areas, and

- best interests of the public.

Those are the same standards that were in place when the 1998 proposal for consolidation of the City of Haines and Haines Borough was considered.

It is noteworthy that the Local Boundary Commission unanimously approved the 1998 Haines consolidation proposal after concluding that all of the applicable legal standards were fully met.

DCED has examined the current Petition in the context of the applicable legal standards in Chapter 3 of the Preliminary Report. DCED also carefully considered comments by the Respondent Haines Borough and by the eleven correspondents in this matter. Based on the analysis in Chapter 3, DCED concludes that the pending consolidation Petition meets all of the applicable standards established in law. Further, DCED concludes that there is a compelling public policy basis to approve the proposal.

²⁴ 1998 consolidation petition, Exhibit A, page 2.

E. Recommendation

Given the number of fundamental developments since the unsuccessful 1998 consolidation effort, the merits of consolidation of local governments in Haines seem stronger today than before. These developments include:

- the significant increase in the number of Haines residents served by two local governments,
- discord between the City and the Borough,
- modification of the AHFC rural housing loan program to eliminate adverse impacts that previously would have resulted from consolidation, and
- challenges facing the Haines economy, such as the effects of the decision by Royal Caribbean International to bypass Haines.

For reasons summarized here and outlined more fully in the full Preliminary Report on this matter, DCED endorses the proposed consolidation of the City of Haines and the Haines Borough.

There are a few minor technical aspects of the Petition that warrant atten-

tion. For example, references to certain existing Haines Borough service areas were inadvertently omitted in some parts of the Petition. Additionally, the Petitioner's intention that the consolidated borough exercise solid waste management on an areawide basis is not formally reflected in the Petition. Moreover, there are minor inconsistencies in the Petition regarding economic development and promotion of tourism. Those would remain functions carried out only in the Townsite Service Area unless voters outside the current City of Haines authorize the extension of the services.

To address the technical issues outlined in the Preliminary Report, DCED specifically recommends that the Petition be amended as follows:

1. To remedy inadvertent omissions in some or all appropriate parts of the Petition by recognizing that the Haines Borough currently operates the Solid Waste Management Service Area, Letnikof Subdivision Road Maintenance Service Area, and Riverview Drive Road Maintenance Service Area.

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DCED'S RECOMMENDATION

Given developments since 1998, consolidation of local governments in Haines is even more attractive than before. DCED recommends minor technical amendments to the Petition. DCED further recommends that the LBC consider possible amendments to the assembly apportionment plan if compelling reasons are offered for such. Following amendments, DCED recommends that the LBC approve the Petition and place the question of consolidation before the voters of the Haines Borough.

2. To provide that the Letnikof Subdivision Road Maintenance Service Area and Riverview Drive Road Maintenance Service Area will remain in place after consolidation.

3. To provide that the Solid Waste Management Service Area will be dissolved and solid waste management will become an areawide power of the consolidated borough.

4. To delete economic development and tourism promotion from the list of areawide powers of the consolidated borough

5. To add financing of capital improvements, along with economic development and tourism promotion to the list of powers to be exercised within the Townsite Service Area.

6. To add public works to the list of powers to be exercised in the Townsite Service Area.

In addition, DCED recommends that the Commission consider amending the Petition with regard to the composition and apportionment of the assembly of the proposed City and Borough of Haines if the Commission is provided with evidence that there is a compelling public policy basis for doing so.

Following the amendment of the Petition, DCED urges the Commission to approve the proposal and present it to the voters throughout the Haines Borough for their consideration.